STATE OF FLORIDA

JULIA L. JOHNSON
CHAIRMAN

CAPITAL CIRCLE OFFICE CENTER
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0854
(904) 413-6044

Public Service Commission

May 9, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

Pursuant to your request of April 10, 1997, enclosed please find the response of the Florida Public Service Commission to the Commerce Committee's questions concerning the electricity industry.

Should you have any questions or require additional information, please contact Mr. Robert L. Trapp of our Division of Electric and Gas at 904/413-6632 or Mrs. Cindy Miller, Associate General Counsel at 904/413-6082.

Sincerely,

Julia L. Johnson
Chairman

JLJ/RLT:ng
Enclosure
cc: Florida Congressional Delegation

Florida Public Service Commission (FPSC)

Response to

House Commerce Committee Questions Concerning the Electricity Industry

1. Has your Commission or state legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

FPSC Response: While there are no formal proceedings currently before the Commission nor legislative bills currently under consideration by the Florida legislature concerning retail competition, the Commission and its staff continue to examine the issues pertaining to retail competition through monitoring and research. During 1996, the Commission sponsored a series of three public forums conducted by the University of Florida, Public Utility Research Center, in which speakers representing various viewpoints were invited to express their views on retail competition. These public forums were intended to educate the Commission, its staff, and other interested persons on current issues pertaining to retail competition. Following these public forums the Commission established an internal working group to continue to monitor developments in other states. During the 1997 legislative session, the Florida House of Representatives Committee on Utilities and Communications also established a research group of legislators to keep the members informed.

2. Has your state asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?

FPSC Response: No. The FPSC believes that federal legislation mandating retail access is premature at this time. Many more questions have been raised about the effect and implementation of retail access than have been answered. It is not clear that a one-size-fits-all mandate for retail access will result in lower rates to all customers in all states or that the current levels of high reliability can be maintained. Individual states, particularly those experiencing higher than average electricity rates, are moving forward with pilot programs and restructuring plans which take into consideration the particular circumstances which exist in each state. Individual states should be allowed to continue to experiment with and develop their own evolutionary paths toward increased competition in the electric utility industry.

If federal legislation is pursued, it should focus on removing existing federal impediments to competition. The FPSC believes that the repeal of PURPA and its requirement for utilities to purchase power from Qualifying Facilities (QFs) should be

evaluated. The FPSC also believes that reform of PUHCA may be advisable. If Congress decides to pursue PUHCA reform it should clarify that states shall continue to have access to the books and records of retail electric service providers and their affiliates.

Finally, if Congress decides to enact legislation on electric matters, Congress should clarify federal/state jurisdiction over generation, transmission, and distribution facilities used to provide electric service to end-use customers. Congress should clarify that the states continue to have jurisdiction over retail transmission, even when transmission services are unbundled as part of a state's decision to implement retail competition. The simple act of unbundling should not cause a change in ratemaking jurisdiction in an area historically governed by the states. State PUC's are in a much better position and possess the specific expertise to address ratemaking issues affecting constituent end-use customers and ensure that the public interest is served. Congress should establish a bright line between state and federal regulatory jurisdiction and should limit federal regulation to transmission from a remote generation source to the boundary of the utility that delivers power to the end-use customer. State commissions would maintain jurisdiction over the terms, conditions, and prices of the transmission service that lies within the state regulated native utility's service territory (wheeling in) as is the current practice for bundled retail services. Where states allow retail access, the rates, terms, and conditions of retail unbundled transmission service should also be regulated by the state commission. Jurisdiction over long distance transmission by interconnected utilities (wheeling out and through) would continue to be regulated at the federal level.

Congress should also clarify that states have jurisdiction over the recovery of stranded costs resulting from state authorized retail access. Costs for facilities that are currently under the jurisdiction of state authorities should not suddenly become the jurisdiction of federal regulation because retail wheeling is instituted. The states are in a much better position to judge the extent and value of assets which may become stranded as a result of retail wheeling. In most cases, the states have reviewed and approved both the construction and the cost recovery for these facilities under bundled rate structures.

Last, Congress should clarify that the primary jurisdiction over the recovery of stranded costs caused by retail-turned-wholesale customers also rests with the states. As with retail stranded costs, costs associated with municipalization are costs that have been reviewed and approved by state PUC's and which are being recovered by rates set by state jurisdiction.

3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address such problems?

FPSC Response: As an arm of the Florida legislature, the FPSC's jurisdiction over

electric utilities is solely derived from the Florida statutes. Under the current regulatory scheme in Florida, public utilities operate as monopoly providers in the areas they serve. They are not allowed to pick and choose their customers but must serve anyone requesting service within their service territory in a non-discriminatory manner. The service territories of each utility are regulated by the FPSC pursuant to the criteria established in Chapter 366, Florida Statutes. Should Congress enact legislation providing for retail competition by a date certain, the Florida legislature would have to revise the laws governing the regulation of electric utilities in Florida. It is logical to assume that the issue of stranded costs, along with a host of other issues which would arise as a result of retail competition, would be addressed by the Florida legislature.

Any move toward retail competition would have to take into consideration the complex nature of Florida's electric utility industry. For example, the FPSC has full retail ratemaking authority over five investor owned electric utilities. However, the FPSC currently has only limited rate structure jurisdiction over 33 municipal electric utilities and 16 rural electric distribution cooperatives which operate in Florida. Rate structure simply means that the rates set by municipals and rural electric cooperatives must be fairly divided among the customer classes (i.e., residential, commercial, industrial, etc.). The FPSC also has jurisdiction over all electric utilities, including three generation and transmission utilities not included above, in the areas of public safety, territorial boundaries, major power plant and transmission line need determinations (site certification), conservation, cogeneration, and bulk generation and transmission power supply planning. Because of the number and complexity of the issues involved with a transition to retail competition, the FPSC continues to urge Congress to allow individual states to continue to experiment with and develop their own evolutionary paths toward increased competition in the electric utility industry.

4. Are there any other areas in which your state currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?

FPSC: Should Congress reform the Public Utility Holding Act, it should clarify that state commission's shall continue to have access to the books and records of retail electric service providers and their affiliates. Please refer to Attachment 1, which is a copy of a letter the FPSC sent to the Florida Congressional delegation outlining the FPSC's position on PUHCA reform.

5. Would any constitutional issues be raised by federal legislation:
   a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?
   b. requiring states to conduct a proceeding on retail competition, reserving to

the state discretion not to adopt retail competition if they determine doing so would not be in its consumers' best interests?

FPSC Response: The FPSC believes that issues pertaining to the 10th Amendment of the U.S. Constitution could be raised by federal legislation that either mandates a date certain for retail competition or requires states to conduct proceedings on retail competition based on federal standards. This matter was addressed in Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742 (1982) regarding the passage of the Public Utility Regulatory Policies Act (PURPA). While the Court ultimately upheld the law, the Justices raised serious questions about a 10th Amendment violation. The case addressed the extent to which state sovereignty shields the states from generally applicable federal regulations. In that case the court warned against the federal government attempting to use state regulatory machinery to advance federal goals.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

FPSC Response: Federal legislation preempting prior state action would discard the experience gained in those states which are currently experimenting with retail competition. It would also ignore the expertise of each state in dealing with issues of local concern and circumstances which may be unique to each state in determining whether retail competition is in the public interest.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.

   a. Are you aware of any study or analysis relevant to your state that supports this conclusion?

   b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.

FPSC Response: a. The FPSC is not aware of any study or analysis conducted for Florida that supports this conclusion.

b. The FPSC has a long standing policy of requiring electric utilities to set their rates

based on the principles of cost of service and rate parity. Cost of service refers to basing rates on the actual cost of providing service to each class of customers, including a reasonable return on utility investment. Rate parity refers to requiring the same rate of return on investment for each class of customers. The application of these principles results in no cross subsidization between rate classes.

In recent years, the FPSC has approved individually negotiated contracts on a case-by-case basis for load retention purposes. While these negotiated rates were below the applicable tariff rate, these contracts were approved because they were shown to be beneficial to all customers of the utility by keeping rates to the remaining body of ratepayers lower than they otherwise would have been had the "at risk" customer left the utility's system.

At present, only one investor-owned utility, Gulf Power Company, has an approved tariff authorizing negotiated contracts with certain "at risk" customers. As part of an experiment, Gulf has received FPSC approval to negotiate rates with customers which are "at risk" of reducing their load through self-service generation or departing Gulf's service territory and with new customers that may not otherwise locate in Gulf's service area. Should Gulf Power Company negotiate a special rate with an "at risk" customer, the negotiated rate must recover, at a minimum, Gulf's incremental cost of serving the customer plus all adjustment clauses (fuel, purchased power, conservation, and environmental) and some contribution to fixed costs. As such, rates to the remaining body of ratepayers should be lower than they otherwise would have been had the "at risk" customer left Gulf Power's system. Any rate reduction below average embedded cost would be absorbed by the company and its stockholders until its next rate case at which time the FPSC would conduct a prudence review of the negotiated contract. At present Gulf Power has not exercised this tariff.

Several municipal electric utilities have also filed tariffs which allow negotiated contracts. The FPSC does not regulate the rates of municipal or cooperative utilities, but the FPSC did review these tariffs from a rate structure perspective to ensure that negotiated contracts would be cost-effective and not result in subsidization between classes of customers.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your state, and how they affect various customer classes.

FPSC Response: Please refer to Attachment 2.

As shown by Attachment 2, average rates for Florida investor-owned electric utilities have been relatively flat on a nominal basis over the last decade and a half. In real terms, adjusting for inflation, the price of electricity in Florida has been declining. This is true for all rate classifications.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who would receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?

FPSC Response: Any transition from a regulated electric utility industry to an unregulated electric utility industry must address the costs and benefits associated with such a transition. At this time, it is not clear that either Congress or the states have fully identified or quantified the costs and benefits associated with retail competition.

The current market trend toward the use of less capital intensive combined cycle generation using currently low cost natural gas does not alter the reality of existing utility generation plant which has been constructed and purchased power which has been contracted to serve customers pursuant to federal and state regulatory requirements. To the extent that the current "book cost" of prudently incurred generation plant and purchased power exceeds "market price", these potentially stranded costs must be addressed before a transition to retail competition can take place.
Under regulation, electric utilities have been required to serve anyone requesting service within their service territory. In Florida as well as the rest of the nation, public utilities have a statutory obligation to serve. They are not allowed to pick and choose their customers. They may not unduly discriminate or give unreasonable preference to any customer. The service they provide must be adequate and reliable and the rates they charge must be fair and reasonable. In order to ensure the provision of adequate, reliable, and affordable electric service utilities have planned their systems years in advance. Power plants are massive, expensive undertakings which require considerable time, effort, and up-front capital investment to design and build. Where such generating facilities have been prudently constructed to serve customer loads, utilities and their stockholders expect to recover their costs. On the other hand, it is equally important to ensure that captive customers, those such as small residential and low income who are likely to have fewer choices in a competitive market, do not bear a disproportionate share of stranded costs.

Also, to the extent that the current "book cost' of prudently incurred generation plant and purchased power is less than "market price", it is equally important that these low cost resources are not sold off-system in a competitive marketplace to create windfall profits for stockholders at the expense of the utility's native retail customers.

10. Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to

its retail markets)? Whose interests does a reciprocity requirements affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

FPSC Response: Florida has not addressed the reciprocity issue.

11. If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?

FPSC Response: As discussed in the response to Question 2, the immediate effect of a retail competition mandate would be that, pursuant to Order No.888, FERC would assume jurisdiction over all transmission facilities in Florida. Since the FERC has not established a bright line between transmission and distribution, the FPSC would be required to hold evidentiary hearings to determine the remaining distribution rate base for each investor-owned utility in Florida upon which an unbundled distribution service charge would be based.

12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

FPSC Response: Yes. As stated in response to Question 3, there are five investor-owned utilities, 33 municipal electric utilities, and 16 rural electric distribution cooperatives which provide retail electric service in Florida. Also, there are two generation and transmission rural electric cooperatives and one generation and transmission municipal agency which provide wholesale electric services in Florida. With regard to federal power, the Southeastern Electric Power Administration (SEPA) owns and operates a 36 MW hydro generating facility (Jim Woodruff Dam) at the Florida/Georgia state line. Any federal legislation pertaining to retail competition must take into consideration the issues affecting each of these unique market segments, including, but not limited to: public purpose; cost and finance structures; federal, state, and local tax issues; etc.

13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

FPSC Response: Funding for the Commission is appropriated by the Florida legislature. It is premature at this time to speculate as to how the Florida legislature would fund implementation of federal legislation mandating competition. However, it is likely that the Commission's workload would increase dramatically.

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?

FPSC Response: No. There are no formal proceedings currently before the Commission nor legislative bills currently under consideration by the Florida legislature concerning securitization of stranded assets.

15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

    a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?

    b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what conditions?

    c. Should Congress enact legislation to modify the holding in Ohio Power Co. V. FERC, 954 F.2d 779 (D.C.Cir. 1992)?

FPSC Response: a. To the extent that PUHCA imposes certain restrictions on one set of market participants that is not imposed on other market participants, the "playing field" for competition may not be level. However, the SEC has streamlined its administrative process under PUHCA and lessened the burdens of PUHCA compliance such that it appears that "effective competition" might be achieved whether or not PUHCA is changed.

b. If Congress elects to reform PUHCA, Congress should clarify that state's shall continue to have access to the books and records of retail electric service providers and their affiliates.

c. If Congress chooses to enact general legislation, it would make sense to address the Ohio Power case. State commission authority to review the affiliate activities of electricity suppliers in the State of Florida should not be "trumped" by the SEC. The SEC is given an entirely different statutory authority that does not provide the focus on the impact on retail ratepayers. While the Ohio Power case addressed SEC authority mooting FERC authority, States have been concerned that the case would be extended to apply to state commission authority as well.